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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/541,009	SCHMIDT, REMY	
	Examiner	Art Unit	
	Charles E. Cooley	1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 August 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 21-30 and 32-41 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 21-30 and 32-41 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

FINAL OFFICE ACTION

Priority

1. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Specification

2. The disclosure is objected to because of the following informalities:
3. a. The specification lacks a description of new Fig. 20 at ¶ [055] and in ¶ [091] - [092].

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The terms used in this respect are given their broadest reasonable interpretation in their ordinary usage in context as they would be understood by one of ordinary skill in the art, in light of the written description in the specification, including the drawings, without reading into the claim any disclosed limitation or particular embodiment. See, e.g., *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004); *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000); *In re Morris*, 127 F.3d 1048, 1054-55 (Fed. Cir. 1997); *In re Zletz*, 893 F.2d 319, 321-22 (Fed. Cir. 1989).

The Examiner interprets claims as broadly as reasonable in view of the specification, but does not read limitations from the specification into a claim. *Elekta*

Instr. S.A.v.O.U.R. Sci. Int'l, Inc., 214 F.3d 1302, 1307 (Fed. Cir. 2000). "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. Inc. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987).

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 21, 22, 26, 34, 35, 37, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1208905 A2.**

EP 1208905 A2 discloses the recited container 3 and solid baffles 7 as seen in Figures 1 and 4. The glass lining of the interior portions of the vessel 3, baffles 7, and the connection of the baffles to the container is taught at ¶[0025]. The baffles 7 are attached to the interior surface of the container 3 by local connections (Fig. 1) that have a dimension much less than the length of the respective baffle 7.

Although the amendatory language added to claim 21 regarding the insensitivity to expansion is noted, this language does not invoke any particular structure to define over EP '905. Since the each local connection in EP '905 has a small cross sectional area with respect to the surface area of the vessel interior, each local connection seen in Fig. 1 is deemed to inherently enable the baffle 7 to be substantially insensitive to expansion of a remainder of the container 3.

7. Claims 21, 22, 26, 34, 35, 37, and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 1172138 A1.

EP 1172138 A1 discloses the recited glass-lined container 1, 2, 3 and hollow baffles 5 as seen in Figures 1-3 and described in the abstract. The hollow baffles are adapted for receiving a thermal fluid per the abstract. The baffles 5 are attached to the interior surface of the container 1 by local connections 4 that have a dimension much less than the length of the respective baffle 5 (Figs. 1 and 3). The local connections have smooth surfaces and a smooth transition into the container wall portion 3 as seen in Fig. 3. The protective lining 16 is disposed on the interior surfaces of the container 1, 2, 3, the arms 4, and the baffles 5 as seen in Fig. 3.

Although the amendatory language added to claim 21 regarding the insensitivity to expansion is noted, this language does not invoke any particular structure to define over EP '138. Since each local connection in EP '905 has a small cross sectional area with respect to the surface area of the vessel interior, each local connection 4 seen in Figs. 1 and 3 is deemed to inherently enable the baffle 5 to be substantially insensitive to expansion of a remainder of the container 3.

* * *

With regard to the above rejections, the functional and conditional language of the claims (e.g., the language regarding the insensitivity of the baffle to container expansion and "capable of" wording) has again been considered but still fails to impart or invoke any further structure to the pending apparatus claims which defines over the

applied prior art. The “capable of” phrase is considered a conditional limitation that does not positively recite any structure to define over the art. Consequently, since all of the claimed structure is met by the applied prior art, the above rejections under 35 USC 102 are deemed proper. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board’s finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959).

“[A]pparatus claims cover what a device is, not what a device does.” *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). See MPEP 2114.

Furthermore, the product-by-process limitations (i.e., the manner in which the manner in which the device is glass-lined or assembled) do not impart patentability to the claims per MPEP 2113.

Claim Rejections - 35 USC § 103

8. To determine whether subject matter would have been obvious, "the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art

resolved Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented."

Graham v. John Deere Co. of Kansas City, 383 U.S. 1, 17-18 (1966).

The Supreme Court has noted:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.

KSR Int'l Co. v. Teleflex Inc., 127 S.Ct. 1727, 1740-41 (2007). "Under the correct analysis, any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." (Id. at 1742).

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. **Claims 25, 28, 29, and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over (EP 1208905 A2 or EP 1172138 A1) in view of any one of (DE 19723977 A1, Nocera (US 3,265,368), or Kropp et al. (US 3,334,870)).**

EP 1208905 A2 or EP 1172138 A1 do not disclose the recited shapes of the baffles. DE 19723977 A1 discloses a baffle with a local connection at a vertical middle of the baffle (Fig. 1). Nocera (US 3,265,368) discloses a baffle that is curved at a higher and lower portion thereof or hockey stick shaped (a linear and angled portion) – Fig. 1. Kropp et al. (US 3,334,870) discloses a baffle that has convex sides (Fig. 4) and a baffle with an undulating surface (Fig. 5) or hockey stick shaped (a linear and angled portion – Fig. 1). It would have been obvious and mere common sense to one having ordinary skill in the art, at the time applicant's invention was made, to have altered the position of the local connection and/or the shape of the baffles in EP 1208905 A2 or EP 1172138 A1 as disclosed by DE 19723977 A1, Nocera, or Kropp et al. for the purpose of altering the flow pattern of the materials being processed in the container.

11. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over EP 1208905 A2 in view of MacLean (US 2,159,856).

EP 1208905 A2 does not disclose the recited configuration of the baffle. MacLean discloses a baffle wherein an end of a body of the baffle is close to the adjacent internal wall and in that its opposite end is further away from the adjacent internal wall as seen in Figures 1, 2, and 5. It would have been obvious and mere common sense to one having ordinary skill in the art, at the time applicant's invention was made, to have altered the configuration of the baffles in EP 1208905 A2 as disclosed by MacLean for the purpose of opposing swirling flow of the material in the

container and to direct the material toward the axial zone of the container (Page 2, col. 1, lines 24-32).

12. Claims 39-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over (EP 1208905 A2 or EP 1172138 A1) in view of any one of (Cowley (US 4,276,262) or Baker et al. (US 5,632,962)).

EP 1208905 A2 or EP 1172138 A1 do not disclose the recited helical shape of the baffles. Cowley in Fig. 1 and Baker et al. in Fig. 12 each disclose a helical baffle within a container. It would have been obvious and mere common sense to one having ordinary skill in the art, at the time applicant's invention was made, to have altered the shape of the baffles in EP 1208905 A2 or EP 1172138 A1 to be helical in form as disclosed by Cowley or Baker et al. for the purpose of imparting a swirling or helical flow to the material in the container.

13. New claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over (EP 1208905 A2 or EP 1172138 A1) in view of any one of (Kirby et al. (US 4,457,627) or Smith, Jr. et al. (US 4,150,900)).

EP 1208905 A2 or EP 1172138 A1 disclose the recited subject matter as noted in sections (6) and (7) above but do not disclose the local connection being welded to the inner wall of the container.

Kirby et al. in Fig. 5 discloses a container 34 with baffles 47 and 48 attached to the inner wall 50 of the container via local connections 52 that have a dimension much

less than the length of the respective baffle 7. The local connections 52 are fixed to the inner wall 50 via welding (col. 7, lines 6-13).

Smith, Jr. et al. in Fig. 6 discloses a container 10 with baffles 36 attached to the inner wall of the container via local connections 20 that have a dimension much less than the length of the respective baffle 36. The local connections 20 are fixed to the inner wall via welding (col. 3, lines 52-56).

Since both Kirby et al. and Smith, Jr. et al. teach that it is well known and conventional to attach baffles to the interior wall of a container via welding, it would have been obvious and mere common sense to one having ordinary skill in the art, at the time applicant's invention was made to have attached the baffles of EP 1208905 A2 or EP 1172138 A1 to the inner wall of the container via an art recognized manner of attaching, namely welding.

Furthermore, it is noted that one of ordinary skill in the art would have recognized that the baffle attachment configurations of EP 1208905 A2, EP 1172138 A1, Kirby et al. and Smith, Jr. et al. are all well known types of baffle attachment mechanisms used in the agitating art, and that such attachments are generally alternative mechanical structures used for securing baffles to the wall of a container of the type shown in the prior art. Moreover, Applicant's specification does not indicate that the type of attachment employed solves any stated problem or produces any new or unexpected result. Accordingly, it can be concluded that the particular type of attachment mechanism employed for the local connection for the baffle would have been a matter of obvious design choice to one of ordinary skill in the art and thus does not serve to

patentably distinguish the claimed invention over the prior art. *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

Furthermore, the product-by-process limitations (i.e., the manner in which the manner in which the device is glass-lined or assembled) do not impart patentability to the claims per MPEP 2113.

Allowable Subject Matter

14. NONE.

Response to Amendment

15. Applicant's arguments filed 21 AUG 2008 have been fully considered but they are not deemed to be persuasive.

Applicant is reminded that “[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The factual determination of anticipation requires the disclosure in a single reference of every element of the claimed invention, either explicitly or inherently. See *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an

ipsissimis verbis test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Turning to the rejection of the claims under 35 U.S.C. § 102(b), it is noted that the terminology in a pending application's claims is to be given its broadest reasonable interpretation (*In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (*Sjolund v. Musland*, 847 F.2d 1573, 1581-82, 6 USPQ2d 2020, 2027 (Fed. Cir. 1988)).

Anticipation under 35 U.S.C. § 102(b) is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of a claimed invention. See *Constant v. Advanced Micro-Devices, Inc.*, 848 F.2d 1560, 1570, 7 USPQ2d 1057, 1064 (Fed. Cir.), cert. denied, 488 U.S. 892 (1988); *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). Moreover, anticipation by a prior art reference does not require either the inventive concept of the claimed subject matter or the recognition of properties that are inherently possessed by the prior art reference. *Verdegaal Brothers Inc. v. Union Oil co. of California*, 814 F.2d 628, 633, 2 USPQ2d 1051, 1054 (Fed. Cir. 1987), cert. denied, 484 U.S. 827 (1987). A prior art reference anticipates the subject matter of a claim when that reference discloses each and every element set forth in the claim (*In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994) and *In re Spada*, 911 F.2d 705, 708, 15 USPQ2d 1655, 1657 (Fed. Cir. 1990)); however, the law of anticipation does not require that the reference teach what Applicant is claiming, but only that the claims "read on" something disclosed in the

reference. *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984) (and overruled in part on another issue), *SRI Intel v. Matsushita Elec. Corp. Of Am.*, 775 F.2d 1107, 1118, 227 USPQ 577, 583 (Fed. Cir. 1985). Also, a reference anticipates a claim if it discloses the claimed invention such that a skilled artisan could take its teachings in combination with his own knowledge of the particular art and be in possession of the invention. See *In re Graves*, 69 F.3d 1147, 1152, 36 USPQ2d 1697, 1701 (Fed. Cir. 1995), cert. denied, 116 S.Ct. 1362 (1996), quoting from *In re LeGrice*, 301 F.2d 929, 936, 133 USPQ 365, 372 (CCPA 1962).

With respect to the applied prior art under 35 U.S.C. § 102(b), the examiner has explicitly demonstrated how the references disclose each and every element set forth in the claims and how the pending claims read on the disclosures of the references, hence the rejections are considered proper.

With regard to EP '905, Applicant states the baffles are connected to the container via screws, rivets, or nuts and bolts which are allegedly difficult to enamel. The examiner reviewed the text of EP '905 and finds the baffles are indeed attached to the inner wall of the container, but not necessarily by screws, rivets, or nuts and bolts. The local connection is EP '905 may be difficult to enamel, but certainly not impossible and the ease of enameling is not an issue in the claims. The examiner notes the pending apparatus claims merely and broadly recite a local connection and are silent with respect to the particular structure or geometry of the local connection. A review of the pending claims reveals that the bulk of the subject matter is drawn to the geometry

of the baffles, with all claimed geometries clearly known in the art as evidenced by sections (10) – (12) above. Thus, while EP '905 may have edges and sharp angles, etc. as asserted by Applicant, the claims are not drafted to preclude such a configuration. Accordingly, Applicant's remarks are not commensurate with the scope of the claims. Since EP '905 discloses a local connection that meets all the requirements of the local connection set forth in the claims, the rejection is maintained.

With regard to EP '138, the sections 1, 2, and 3 form the inner wall of the container as seen in Figure 3. The baffle 5 is connected to the inner wall portion 3 via local connection 4 with all these parts lined with a protective coating 16. Applicant argues the elements 5 are not baffles, but the plates 5 are planar members on the interior portion of a container which coact with the materials being agitated (via impeller 10) in the container, which is the exact function of baffles in the agitating art. Nevertheless, the claims are devoid of any peculiar structure of the baffles which defines over any of the prior art applied against the claims in this final action.

The dependent claims merely recite the shapes and orientation of the baffles which shapes and orientations are clearly met by the prior art in sections (10) - (12) above. Contrary to Applicant's remarks, said prior art is not relied upon for the manner in which the baffles are attached to the container wall, but again for the recited shapes and orientation of the baffles. Any of the baffles in DE 19723977 A1, Nocera (US 3,265,368), Kropp et al. (US 3,334,870), MacLean (US 2,159,856), Cowley (US 4,276,262), Baker et al. (US 5,632,962), (Kirby et al. (US 4,457,627) or Smith, Jr. et al. (US 4,150,900) are considered quite capable of being lined with a protective coating

(the coating being set forth in the base references to EP 1208905 A2 or EP 1172138 A1), and again the ease or efficiency of the coating process on such baffles is not at issue in the pending apparatus claims. Because "[n]on-obviousness cannot be established by attacking references individually where the rejection is based upon the teachings of a combination of references," *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986), the examiner finds no fault in the 103 rejections .

Regarding Applicant's remarks on the manner in which the baffle device is glass-lined or assembled, "[e]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) Accordingly, the product set forth in claims 21, 37, and 41 is met by the applied prior art, irrespective of the manner or order of production.

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Schmidt discloses a hockey stick shaped baffle at 32.

17. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION. ANY RESPONSE FILED AFTER THE MAILING DATE OF THIS FINAL REJECTION WILL BE SUBJECT TO THE PROVISIONS OF MPEP 714.12 AND 714.13.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley in Art Unit 1797 whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri.. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Charles E. Cooley/

Charles E. Cooley
Primary Examiner
Art Unit 1797

10 December 2008